ATTORNEY-GENERAL

v.

P. GOPALAN NAIR

HIGH COURT, SINGAPORE
TS SINNATHURAY J
[ORIGINATING MOTION NO. 88 OF 1991]
11 NOVEMBER 1991

CIVIL PROCEDURE: *Application for an Order of Committal for contempt - Gross contempt of Court - The proper sentence to be imposed - Determination of the extent of liability - Mitigation in terms of latitude to be shown - Respondent is a qualified person in law.*

This is an application by the Attorney-General Singapore for an Order of Committal for contempt and the matter before the Court was in relation to sentence in the proceedings and the issue of liability of the respondent.

It was submitted for the respondent on the issue of submission on liability that what the respondent said at the election rally related to matters of appointment, transfer, promotion, etc., of judicial officers in the subordinate Courts. It was also suggested that it was in that context that the respondent in speaking at the rally made the offending statements.

The Court reviewed the actual words used in the statements made and as a finding of fact held that an innuendo pregnant with meaning would be in contempt of Court. So the contempt of Court committed by the respondent is of gross contempt of Court.

Held:
In the present case, it is to be noted that the respondent is a practising lawyer, and had scandalized the whole of the subordinate Courts. I do take into account that what was said was said orally at an election rally to about 2000 people.

[Respondent to pay a fine of $8000 or in default serve two months imprisonment.]

Case referred to:
Badry v. DPP of Mauritius [1983] 2 AC 297 ***(foll)***

For the applicant - Tan Teow Yeow (Tan Chee Meng with him); Attorney General's Chambers
For the respondent - J B Jeyaretnam; M/s J B Jeyaretnam & Co.

JUDGMENT

TS Sinnathuray J:

I will say a few words on sentence in these proceedings.

It is right to say and nobody will dispute that the subject of the independence of the Courts, independence of the Judges, is a matter of public interest. Much has been said by Mr. Jeyaretnam for the respondent in his submission on liability that what the respondent said at the election rally related to matters of appointment, transfer, promotion, etc., of judicial officers in the subordinate Courts. It was said that it was in that context that the respondent in speaking at the rally made the offending statements. With respect, I cannot accede to that submission.

I must look at the words used by the respondent at that rally. I will enumerate them:

(1) ... I want to talk a little about the Judges in the Subordinate Courts.

He went on to explain that the subordinate Courts were those Courts in Havelock Road.

(2) He then said,

The Judges in the Subordinate Courts are employed by the Government.

In that context, he made the next statement.

(3) When you, if you have a case against the Government, you will have to go before that same very Judge who is employed by the Government.

In making this statement, there is an innuendo pregnant with meaning which would be in contempt of Court.

(4) He next said:

... in other countries, Judges are not employed by the Government.

(5) And then came the most objectionable statement:

... there is a saying that justice must be seen to be done, and if you ask me, I think in Singapore, justice is not seen to be done ....

(6) Finally, he gave his reason as to why justice is not seen to be done, another statement in contempt. He said:

... because when you have the Judges being employed by the Government, justice is not seen to be done.

Though Counsel is entitled to make to the best of a difficult case, it is clear to me that there is nothing in these statements which can be considered to refer to appointments, promotions and transfers of judicial officers in the subordinate Courts. What the respondent was speaking about was of the judicial duties of the officers who man the subordinate Courts, the Magistrates and the district Judges, that they in the discharge of their duties as Magistrates and Judges were giving decisions contrary to the justice of the case before them, that justice was not seen to be done by their decisions.

So, the contempt of Court committed by the respondent in this case is a gross contempt of Court. And in assessing the proper sentence to be imposed, I must clearly bear these facts in mind.

In mitigation, it is submitted that when the respondent made these statements, it was said "in the heat of the moment at an election rally" It is also in the affidavit of the respondent that he was speaking off the cuff. Therefore, the submission is some latitude must be shown in this regard. I will bear it in mind.

But, on the other hand, the respondent is not an unqualified person in the law. He is a practising advocate and solicitor of over 10 years' standing. It has been said by Mr. Jeyaretnam that he appears extensively in the subordinate Courts. Though the respondent appears regularly in the subordinate Courts, yet at an election rally he chose to say that the decisions of the judicial officers in these Courts were to put it bluntly unjust decisions.

Now, as I said in the course of the hearing, *Badry v. DPP of Mauritius* [1983] 2 AC 297 is a relevant case, both in the context of liability and also in determining what should be a proper sentence in this case. In that case, Badry, a former Minister in the Government of

Mauritius, had scandalized the Supreme Court. He was sentenced to six weeks' imprisonment on each of the three motions by the Supreme Court. On appeal to the Privy Council two motions were allowed and the sentences on them quashed. The question of sentence on the remaining motion was remitted to the Supreme Court for consideration by that Court in the light of the appeal and that the appeals on two motions were allowed and the convictions and sentences set aside. It is not known what the Supreme Court did with the case. In the present case, it is to be noted that the respondent is a practising lawyer, and had scandalized the whole of the subordinate Courts in Havelock Road.

Next, I have also been given the sentences that have been imposed in Singapore in other cases of contempt. It is true as Mr. Jeyaretnam has said, they were all of newspaper reports which had scandalized the Courts. In those cases there is some permanence about the statements that were made. In this case, I do take into account that what was said was said orally at an election rally to about 2,000 people. I think that in all the circumstances a proper sentence is the respondent pay a fine of $8,000 or in default serve two months' imprisonment. The fine is to be paid in two weeks. And the respondent has to pay the taxed costs to the applicant.

Also found at [1992] 1 CLJ 757